

# EXHIBIT 149

Duggan, Ph.D., Mark G.

April 17, 2009

Baltimore, MD

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS  
 )  
THIS DOCUMENT RELATES TO )  
U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris  
the Florida Keys, Inc., et )  
al. )  
v. )  
Abbott Laboratories, Inc. )  
No. 07-CV-11618-PBS )  
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Videotaped deposition of MARK G. DUGGAN, PH.D.

Baltimore, MD

Friday, April 17, 2009

9:00 a.m.

Henderson Legal Services, Inc.

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<p>1 Videotaped deposition of MARK G. DUGGAN, PH.D.,</p> <p>2 held at the Westin Baltimore Washington Airport Hotel,</p> <p>3 1110 Old Elk Ridge Landing Road, Baltimore, Maryland</p> <p>4 21090, the proceedings being recorded stenographically</p> <p>5 by Jonathan Wonnell, a Registered Professional Court</p> <p>6 Reporter and Notary Public of the State of Maryland,</p> <p>7 and transcribed under his direction.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 C O N T E N T S</p> <p>2</p> <p>3 WITNESS NAME PAGE</p> <p>4 MARK G. DUGGAN, PH.D.</p> <p>5 Examination By Ms. Geisler..... 008</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NUMBER DESCRIPTION PAGE</p> <p>10 Exhibit Duggan 001 - Expert report of Mark G.</p> <p>11 Duggan Ph.D..... 009</p> <p>12 Exhibit Duggan 002 - Myers and Stauffer state</p> <p>13 summaries..... 012</p> <p>14 Exhibit Duggan 003 - Transcript of the</p> <p>15 deposition of Nancy L.</p> <p>16 Carlson (277 pgs.)..... 030</p> <p>17 Exhibit Duggan 004 - Myers and Stauffer report</p> <p>18 entitled "A survey of</p> <p>19 acquisition costs of</p> <p>20 pharmaceuticals in the</p> <p>21 State of California"</p> <p>22 dated 6/02..... 141</p>
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<p>1 A P P E A R A N C E S O F C O U N S E L</p> <p>2</p> <p>3 On behalf of Ven-A-Care of the Florida Keys,</p> <p>4 Inc.:</p> <p>5 C. JARRETT ANDERSON, ESQ.</p> <p>6 Anderson LLC</p> <p>7 208 West 14th Street, Suite 3-B</p> <p>8 Austin, Texas 78701</p> <p>9 (512) 469-9191</p> <p>10 jarrett@anderson-llc.com</p> <p>11</p> <p>12 On behalf of Abbott Laboratories, Inc.:</p> <p>13 CAROL P. GEISLER, ESQ.</p> <p>14 Jones Day</p> <p>15 77 West Wacker</p> <p>16 Chicago, Illinois 60601</p> <p>17 (312) 782-3939</p> <p>18 cgeisler@jonesday.com</p> <p>19</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 MATT DE LEON, Videographer</p>	<p>1 E X H I B I T S (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Duggan 005 - Myers and Stauffer report</p> <p>4 entitled "Determination of</p> <p>5 the cost of dispensing</p> <p>6 pharmaceutical</p> <p>7 prescriptions for the</p> <p>8 Texas Vendor Drug Program"</p> <p>9 dated 8/02..... 148</p> <p>10 Exhibit Duggan 006 - Myers and Stauffer</p> <p>11 reporter entitled "A</p> <p>12 survey of costs of</p> <p>13 dispensing prescriptions</p> <p>14 and estimated acquisition</p> <p>15 cost in the state of</p> <p>16 Kentucky " dated 8/98..... 166</p> <p>17 Exhibit Duggan 007 - Transcript of the</p> <p>18 deposition of C. Benny</p> <p>19 Rideout dated 12/5/08</p> <p>20 (353 pgs)..... 169</p> <p>21</p> <p>22 (CONTINUED)</p>

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<p>1 PROCEEDINGS</p> <p>2 (9:04 a.m.)</p> <p>3 THE VIDEOGRAPHER: The time is now 9:03.</p> <p>4 Today's date is April 17th 2009 and we are now on</p> <p>5 the record with tape number 1 of the videotaped</p> <p>6 deposition of Dr. Mark G. Duggan in the United</p> <p>7 States District Court in the District of</p> <p>8 Massachusetts In Re: Pharmaceutical Industry</p> <p>9 Average Wholesale Price Litigation related to the</p> <p>10 United States of America ex rel. Ven-A-Care of the</p> <p>11 Florida Keys, Incorporated versus Abbott Labs</p> <p>12 Incorporated, 07-CV-11618-PBS under the MDL Number</p> <p>13 1456, Civil Action Number 01-12257-PBS.</p> <p>14 My name is Matt DeLeon and I am the</p> <p>15 certified legal video specialist on behalf of</p> <p>16 Henderson Legal Services. Today's court reporter</p> <p>17 is Jon Wonnell in association with Henderson Legal</p> <p>18 Services. Will counsel please introduce</p> <p>19 themselves and state your appearances for the</p> <p>20 record?</p> <p>21 MS. GEISLER: Carol Geisler representing</p> <p>22 Abbott Laboratories.</p>	<p>1 A. I brought with me my report for this</p> <p>2 case.</p> <p>3 Q. Okay. Do you have any notes or anything</p> <p>4 written on that?</p> <p>5 A. Not that I recall. I doodled a little</p> <p>6 bit on the front. But other than that not much.</p> <p>7 Nothing that I recall.</p> <p>8 Q. We're going to start by marking an</p> <p>9 official copy of your report for today. So I'd</p> <p>10 like to use this copy.</p> <p>11 A. Okay.</p> <p>12 (Exhibit Duggan 001 was marked for</p> <p>13 identification.)</p> <p>14 BY MS. GEISLER:</p> <p>15 Q. And why don't you take a minute to look</p> <p>16 through it. But what we've marked as Duggan</p> <p>17 Exhibit 1 is a copy of the report that was filed</p> <p>18 in this case on March 27th 2009.</p> <p>19 A. Okay. Let's see. Hold on one second.</p> <p>20 Okay. I just wanted to make sure all the tables</p> <p>21 and stuff were here.</p> <p>22 Q. Okay. And can you look at page 93 for</p>

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<p>1 actual average prices was typically, at least 2 before 2003, in the neighborhood of three, three 3 and a half to one. I think it's a table in my 4 report. Let me just get to it. 5 Yeah. If one looks, for example, in 6 table 1 or in table 6, typically -- there's 7 heterogeneity across these products for some. But 8 the average ratio of AWP to the price for the 9 whole time period is about 2.84, almost three 10 times greater. And that's depicted also at least 11 for the top selling products in figure 1 and 2 12 where one can see -- sort of compare the AWP with 13 the actual average price. So from that one can 14 see that, you know, for a time, at least for this 15 product, the ratio was on the order of 3.8 to 1. 16 But that declined to about 2 to 1 in the middle of 17 2003. 18 Q. And what's the dollar value of that 19 spread? 20 A. It depends on the claim. 21 Q. Approximately? 22 MR. ANDERSON: Objection, vague and</p>	<p>1 calculate is about \$3, correct? 2 A. Well, it depends on if one is looking at 3 it from the perspective of the claim or from the 4 perspective of let's say, in that earlier example 5 that we talked about, like the bottle. So it 6 seems plausible that -- like that figure 1, where 7 there's a difference between -- there's an AWP of 8 about \$36 when the average price is about \$10. 9 But as we talk about before, for many of these -- 10 in many cases the number of units in a 11 prescription will fall below the number of units 12 in a bottom. 13 Because these are antibiotics so it may 14 be the prescription is a week long or five days or 15 ten days. And maybe in the bottle -- I don't have 16 memorized how many pills or tablets there are in 17 these packages. Maybe there's like a hundred. So 18 if there's a hundred maybe -- so it depends on 19 whether one's looking at it from the perspective 20 of a bottle or package, whatever one wants to call 21 it, or from the perspective of the Medicaid claim. 22 Because these claims, the duration of</p>
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<p>1 ambiguous. 2 A. Right. It just depends on the claim. 3 Q. Well, is it \$30? Is it \$3,000? Is it 4 \$3? 5 MR. ANDERSON: Same objections. 6 A. So looking across all the claims the 7 average differences typically -- the average 8 difference per claim is typically on the order of 9 3 -- a little more than \$3. 10 Q. Okay. 11 A. With -- of course this likely varied 12 over the time period given the sharp increase in 13 actual transaction prices, the diffusion of state 14 MAC prices and so forth in the later part of the 15 period. 16 Q. So the -- 17 A. So just to -- so if I can finish, so 18 that's an average across all the time periods. 19 Telescoping in on a specific NDC quarter the 20 results might be somewhat different. 21 Q. But on average the dollar difference 22 between the AWP and the average price that you</p>	<p>1 the prescriptions is often somewhat short given 2 they're antibiotics. 3 Q. Can you look at Exhibit 2, please, the 4 sheet for California? 5 A. Yeah. The Medicaid adjudication 6 methodology? 7 Q. Mm-hmm. In the column marked dispensing 8 fee where it says brand or generic, until 2004 the 9 dispensing fee was \$4.05, correct? 10 A. Until August 31st 2004 it was \$4.05, 11 that's correct. 12 Q. And if -- based on your calculation the 13 average per claim difference between what Medicaid 14 paid and what Medicaid would have paid had they 15 used your alternative price is \$3, right? 16 A. I don't know that we're doing an apples 17 to apples here, because the time periods I think 18 differ somewhat. But it is the case that on 19 average if one uses a difference -- if the 20 difference is \$3 for the average prescription 21 then, right, the difference is on average \$3 -- 22 you know, California may later have put in place</p>

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